No. 90-7675

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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1991

R.A.V.,

Petitioner,

vs.

ST. PAUL, MINNESOTA,

Respondent.

On Writ Of Certiorari To The
Supreme Court of Minnesota

BRIEF *AMICUS CURIAE* OF THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

May a local government criminalize the act of burning a cross on the private property of a black family under an ordinance limited by the state's highest court to prohibit only fighting words or conduct directed to inciting or producing imminent lawless action and likely to incite or produce such action?

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ADL, *Hate Crimes Statutes: A Response to Anti-Semitism, Vandalism and Violent Bigotry* (1988 & Supp. 1990) 6

ADL, *Hate Crimes: Policies and Procedures for Law Enforcement Agencies* (1988) . . . 4

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ADL, *Skinheads Target the Schools* (1989) 4

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Lawrence, "If He Hollers Let Him Go: Regulating Racist Speech on Campus," 1990 Duke L.Rev. 431 10

Matsuda, "Public Response to Racist Speech: Considering the Victim's Story," 87 Mich. L. Rev. 2320 (1989) 22

Minnesota Advisory Committee to the United States Commission on Civil Rights, *Bigotry and Violence in Minnesota* (October 1989) 8

Minnesota Board of Peace Officer Standards and Training, *Bias Motivated Crimes: A Summary Report of Minnesota's Response* (1990) 5, 8

Minnesota Department of Public Safety, *Bias Offense Reporting System* (Feb. 11, 1991) 5

Shea, "Don't Bother to Smile When You Call Me That--Fighting Words and the First Amendment," 63 Kentucky L.J. 1 (1975) 18

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Valentine, *Sharp Rise in Hate Crimes Reported by M' Commission*, Wash. Post, Sept. 15, 1990, at B1, Col. 2 5

STATEMENT OF INTEREST[1]

The Anti-Defamation League of B'nai B'rith (the "ADL") is one of this country's oldest civil rights organizations, having been founded in 1913 to advance good will and mutual understanding among all races and religions. The impetus for the ADL's founding was the unjust conviction for murder of a Jewish man, Leo Frank, in Atlanta. When the Governor of Georgia commuted Mr. Frank's sentence to life imprisonment, Mr. Frank was victimized by the ultimate hate crime--he was lynched.

For over 75 years, the ADL has been committed to fighting racial and religious discrimination in employment, housing, education and public accommodations, and to ensuring that every individual receives equal protection under the law. The ADL is equally committed to protecting the basic freedoms set forth in the Bill of Rights and is highly sensitive to the First Amendment issues raised by this case.

Consequently, the ADL is uniquely situated to suggest a balance of the difficult and competing interests presented by the instant case. It recognizes the paramount importance of protecting basic First Amendment privileges even where such privileges result in the expression of unpalatable ideas, but it also recognizes that bias-motivated crimes are increasing and that legislatures properly may provide a legal basis for punishing behavior which is indisputably criminal and motivated by racial, ethnic or religious hatred.

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[1] Letters of Consent to the filing of this brief have been filed with the Clerk pursuant to Rule 37.3.

Accordingly, the ADL believes that while St. Paul Ordinance § 292.02 (the "Ordinance") is not an ideal hate crimes statute, it validly addresses a growing social problem and, *as narrowly construed by the Minnesota Supreme Court*, passes Constitutional muster.

SUMMARY OF THE ARGUMENT

The Ordinance has been construed by the Minnesota Supreme Court to prohibit only "fighting words" or conduct that is directed to inciting or producing "imminent lawless action." This is a well-settled construction of the conduct prohibited by the Ordinance, i.e., that which provokes "anger, alarm or resentment." Only an outright rejection of the fighting words or imminent lawless action doctrines would justify a reversal of the lower court's decision.

The Petitioner, and Amici in support of his position, fail to recognize that the Ordinance, on its face and as construed, does not seek to ban entirely the burning of a cross, the display of a nazi swastika or other types of unpopular symbols. Rather, the St. Paul City Council and the Minnesota Supreme Court recognized that the context in which these symbols are displayed determines whether they are entitled to First Amendment protection. When not used in a personally threatening or assaultive manner, these symbols are part of the marketplace of ideas of which our society is justifiably tolerant; however, when used as a form of a bias-motivated personal attack, they cease to symbolize ideas and become violent tools that inflict injury. This Court has consistently recognized that this type of

"expression" should not be afforded First Amendment protection.

LEGAL ARGUMENT

I. Punishing Hate Crimes Advances Clear And Compelling Public Policy

The Ordinance under review is just one of a rapidly increasing number of laws recognizing and punishing hate crimes. Numerous legislative bodies, on both the state and local level, have attempted to come to grips with the problems caused by criminal behavior which is motivated by racial, ethnic or religious bias. More than half the states and the Federal Government have adopted hate crime statutes (*see* Appendix A attached hereto). Several states have laws which specifically target cross burning (*see* Appendix B attached hereto).

Statistics indicate a clear trend of increasing, and increasingly violent, hate crimes.[2] The ADL's *1990 Audit of Anti-Semitic Incidents* (1991) indicates that anti-semitic incidents reported to ADL offices nationwide have increased from 1432 in 1989 to 1685 in 1990; only 377 such acts were reported in 1980. *ADL Bulletin* (March 1991), at 3. State legislatures have found, and other studies have indicated, similar dramatic increases in crimes based on racial and ethnic animosity. In states that have adopted bias crimes reporting acts, law enforcement agencies are noting a disturbingly high number of hate crimes. *See, e.g.*, Minnesota Board of Peace Officer Standards and Training, *Bias Motivated Crimes: A Summary Report of Minnesota's Response* (1990), at 34 (105 hate crimes reported in last five months of 1989 compared to 49 for same period in 1988). The Minnesota Department of Public Safety recorded 307 hate crimes in 1990, 255 of which were committed based on the race of the victim, including seven cross burnings. Minnesota Department of Public Safety, *Bias Offense Reporting System* (Feb. 11, 1991).[3]

The legislature may validly determine that hate-motivated crimes are so damaging to the very fabric of society that they deserve special statutory treatment and should be punished as crimes in their own right, not just under general assault, trespass and other types of statutes.

> The damage done by hate crimes cannot be measured solely in terms of

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[2] The ADL conducts its own nationwide annual audit of anti-semitic incidents (many of them criminal) and monitors hate groups. *See, e.g.*, ADL, *1990 Audit of Anti-Semitic Incidents* (1991); ADL, *Electronic Hate: Bigotry Comes to TV* (1991); ADL, *Neo Nazi Skinheads: A 1990 Status Report* (1990); ADL, *Skinheads Target the Schools* (1989); ADL, *Young and Violent: The Growing Menace of America's Neo-Nazi Skinheads* (1988); ADL, *Hate Groups in America: A Record of Bigotry and Violence* (1988); ADL, *Hate Crimes: Policies and Procedures for Law Enforcement Agencies* (1988); ADL, *The Hate Movement Today: A Chronicle of Violence and Disarray* (1987).

[3] Other states and municipalities have made similar findings. In Boston, 202 hate crimes were reported in 1989, compared to 273 in 1990. Tye, *Hate Crimes Increase, May Hit Record in '91*, Bost. Globe, April 14, 1991, at 26, Col. 2. The Maryland Commission on Human Relations reported an increase in assaults, arsons, cross burnings, vandalism and threats resulting from racial and ethnic prejudice from 398 in 1986 to 686 in 1989. Valentine, *Sharp Rise in Hate Crimes Reported by Md. Commission*, Wash. Post, Sept. 15, 1990, at B1, Col. 2. The Los Angeles County Human Relations Commission noted 378 hate crimes were reported in 1989, compared to 272 in just the first half of 1990. Hernandez, *Hate Crimes Rise Sharply, Panel Reports*, L.A. Times, Sept. 7, 1990, at B1, Col. 6.

> physical injury or dollars and cents. Hate crimes may effectively intimidate other members of the victim's community, leaving them feeling isolated, vulnerable, and unprotected by the law. By making members of minority communities fearful, angry, and suspicious of other groups--and of the power structure that is supposed to protect them--these incidents can damage the fabric of our society and fragment communities. For these reasons, hate crimes demand a special response from law enforcement officials and civic leaders.

ADL, *Hate Crimes Statutes: A Response to Anti-Semitism, Vandalism and Violent Bigotry* (1988 & Supp. 1990).

In adopting such laws, legislatures have articulated valid and compelling rationales for such legislation. For example, the legislature of the State of Washington noted that "by tradition the burning of a cross is a racially motivated action that is highly intimidating and represents a threat to the safety of the person or property of the victim." Wash. Rev. Code § 9A.36.080(2) (Supp. 1990). The General Assembly of Rhode Island found and declared that "it is the right of every person . . . to be secure and protected from fear, intimidation and physical harm . . ." based upon, *inter alia*, race. R.I. Gen. Laws § 11-53-1 (Supp. 1987). The West Virginia legislature declared that all persons within its boundaries have the right to be free from intimidation by threat of violence based on, *inter alia*, race. W.Va. Code § 61-6-21 (Supp. 1987).

Courts have not hesitated to give due deference to such legislative enactments. In *State v. Beebe*, 67 Or. App. 738, 740, 680 P.2d 11, 13 (Or. App. 1984), the court stated that the legislature may:

> legitimately determine that the danger to society from assaultive conduct directed toward an individual because of his race, religion or national origin is greater than the danger from such conduct under other circumstances. Assaultive behavior motivated by bigotry is directed not just at the victim but, in a sense, toward the group to which the particular victim belongs. Such confrontations therefore readily--and commonly do--escalate from individual conflicts to mass disturbances. That is a far more serious potential consequence than that associated with the usual run of assault cases. . . .

Similarly, in *People v. Grupe*, 141 Misc. 2d 6, 8, 532 N.Y.S. 2d 815, 817 (N.Y. Crim. Ct. 1988), the court found that, in enacting a hate crime statute, "the legislature was responding to an increase in reported incidents of physical harassment of people and vandalism of property motivated by bias and sought to increase penal sanctions imposed for this type of conduct." A state-sponsored study had found that bias-related violence was increasing, that existing laws failed to protect victims of bias-related violence, and that "harassment and threats of violence designed to deprive minorities of equal access to housing has intensified." *Id* at 819. The court in *Grupe* noted that the power and duty of the

legislature to penalize such conduct was well established and that there was a compelling governmental interest in penalizing bias-related violence. *Id.*

Minnesota has a clearly articulated public policy of protecting citizens from violence, terror, harassment and intimidation based on race. The enactment of hate crimes legislation was preceded by the creation of the Governor's Task Force on Violence and Prejudice, which noted an alarming number of bias-motivated crimes. *Bias Motivated Crimes: A Summary Report of Minnesota's Response*, *supra*, at 20-22. Accordingly, it recommended a legislative package, including the adoption of penalty enhancement statutes and a bias crimes reporting act. The United States Civil Rights Commission, holding hearings in Minnesota, came to the same conclusion. Minnesota Advisory Committee to the United States Commission on Civil Rights, *Bigotry and Violence in Minnesota* (October 1989). The Ordinance at issue in this case clearly reflects this compelling public policy.

II. A Municipality May Properly Prohibit Cross Burning When That Act Constitutes A Bias-Motivated Personal Attack

A late-night cross burning in a black family's yard is an act of violence, terror, harassment and intimidation.

> After the mother saw the burning cross, she was crying on her knees in the living room. Upon seeing the cross, the mother felt feelings of frustration and

> intimidation and feared for her husband's life. She testified what the burning cross symbolized to her as a black American: "murder, hanging, rape, lynching. Just about anything bad that you can name. It is the worst thing that can happen to a person."

United States v. Skillman, 922 F.2d 1370, 1378 (9th Cir. 1991).

At issue in this case is not "insulting, and even outrageous, speech," *Boos v. Barry*, 485 U.S. 312, 322 (1988). The ADL concedes that such speech, however unpleasant, enjoys First Amendment protection. What is at stake in this case is very different.

A burning cross directed at a black family has a clear and specific meaning -- it is a palpable threat of violence, not an expression of political views. It is an act of terror and harassment. The burning cross "was not mere advocacy, but rather an overt act of intimidation which, because of its historical context, is often considered a precursor to or a promise of violence against black people." *U.S. v. Lee*, 935 F.2d 952, 956 (8th Cir. 1991).

In *Skillman*, the court noted that it was reasonable for a black family to suffer lingering effects from witnessing a cross burning in their yard, including continued fright that they might be murdered in their home. *Skillman*, 922 F.2d at 1378. Similarly, in *United States v. Salyer*, 893 F.2d 113, 114 (6th Cir. 1989), the court noted that a burning cross was more frightening than mere racial epithets shouted at a black couple. *See also State v.*

Miller, 6 Kan. App. 2d 423, 629 P.2d 748 (1981) (under circumstances, burning cross was a terroristic threat). As one commentator has stated:

> When the Klan burns a cross on the lawn of a black person who joined the NAACP or exercised his right to move to a formerly all-white neighborhood, the effect of this speech does not result from the persuasive power of an idea operating freely in the market. It is a threat, a threat made in the context of a history of lynchings, beatings, and economic reprisals that made good on earlier threats, a threat that silences a potential speaker.

Lawrence, "If He Hollers Let Him Go: Regulating Racist Speech on Campus," 1990 Duke L.Rev. 431, 471-2. It is difficult to think of another act which, although possessing some expressive content, is so clearly an act of violence.

The use of symbols charged with historical associations of hate and violence are, when directed at a specific target, capable of inflicting injury. Cross burning has been specifically recognized as having such an effect by state[4] and federal[5] courts.

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[4] *See, e.g., State v. Reed*, No. 1006 (Tenn. Crim. App., April 18, 1985) (LEXIS, State library) (Tennessee statute, which prohibited cross burning "with the intention of intimidating another," was upheld against a First Amendment challenge); *Commonwealth of Pennsylvania v. Koch* 288 Pa. Super 290, 431 A.2d 1052 (1981) ("[t]he burning of the cross . . . to the consternation of the population of the community, is disorderly conduct"); *State v. Miller*, 6 Kan. App. 2d 432, 629 P.2d 748 (1981)(the act of burning a cross constituted a "terroristic threat" and as such could be prohibited by a Kansas statute punishing such conduct).

This Court long has recognized in a variety of contexts that the First Amendment does not protect expressive conduct which inflicts injury. *See, e.g., Ladner v. United States*, 358 U.S. 169, 176 (1958) (placing another in fear of harm is assault even when there is no actual intent to do harm); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 341 (1974) ("the legitimate state interest underlying the law of libel is the compensation for the *harm* inflicted by

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[5] *See, e.g., U.S. v. Gresser*, 935 F.2d 96 (6th Cir. 1991) (conviction for cross burning; held to violate provisions of 42 U.S.C. § 3631(a) and 42 U.S.C. § 241 criminalizing threats or intimidation which interferes with the exercise of federally-granted rights); *U.S. v. Worthy*, 915 F.2d 1514 (11th Cir. 1990) (stipulated that cross burning was attempt to intimidate black family); *Stevens v. Tillman*, 855 F.2d 394 (7th Cir., 1988), *cert. denied*, 489 U.S. 1065 (1988) (cross burners use the threat of violence to induce targets to refrain from exercising federally assured rights). Federal courts have not hesitated to enjoin cross burning as an intimidating and harassing act. *See, e.g., Vietnamese Fishermen's Ass'n v. Knight of the Ku Klux Klan*, 543 F. Supp. 198 (S.D. Tex. 1982) (cross burning enjoined); *U.S. v. Crenshaw County Unit of the United Klans of Am.*, 200 F. Supp. 181 (M.D. Ala. 1968) (cross burning enjoined); *United States v. Original Knights of the Ku Klux Klan*, 250 F. Supp. 330 (E.D. LA. 1965) (enjoined Ku Klux Klan from using cross burnings and other intimidating techniques to prevent blacks from exercising their right to vote, enrolling their children in predominantly white schools and other activities). Cf. Model Penal Code § 250.4(5) (1962), which prohibits certain types of harassing conduct, including "alarming conduct serving no legitimate purpose of the actor." The commentary to this subsection notes that "[t]his provision acts as a hedge against the ingenuity of human beings in finding ways to bedevil their fellows. It applies, for example, to burning a cross on the lawn of a black family ...."

defamatory falsehood") (emphasis added); *Watts v. United States*, 394 U.S. 705, 707 (1969) (true threats are not constitutionally protected speech); *United States v. Mitchell*, 463 F.2d 187, 191 (8th Cir. 1972), *cert. denied*, 410 U.S. 969 (1973) (an unprotected threat exists if a reasonable person would foresee that the listener will believe he will be subjected to physical violence). Similarly, expressive conduct which has an injurious effect may be proscribed. *See, e.g., Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986) (expressive conduct which creates hostile or offensive working environment may be proscribed); *Firefighters Institute for Racial Equality v. City of St. Louis*, 549 F.2d 506 (8th Cir. 1977), *cert. denied*, 434 U.S. 819 (1977) (expressive conduct which may destroy completely the emotional and psychological well-being of minority group workers may be proscribed); *see also* Tribe, *Constitutional Law* 856 (2d ed. 1988) ("the First Amendment need not sanctify the deliberate infliction of pain simply because the vehicle used is verbal or symbolic rather than physical").

It is clear that cross burning as it occurred in the instant case constitutes the type of violent, threatening, harassing or intimidating conduct that has never received First Amendment protection. The acts for which petitioner was charged were designed both to prevent American citizens from exercising fundamental rights and to terrorize them. Petitioner chose his form of activity; it was not a shouted epithet nor the waving of a placard or banner. It was a red-hot and searing action, pregnant with meaning to the victims, which meaning was clearly understood by both perpetrator and victims. Petitioner may not now claim that he is

being punished merely for the expression of an unpopular idea.[6]

A legislature may determine that clear, compelling and well-established public policy considerations require that such acts be criminalized, not under general assault statutes, but under statutes and ordinances designed specifically to punish and deter such acts. Criminalizing violent hate crimes serves both to protect victims and potential victims from the horrifying effects of such crimes, as well as to reassure all citizens of good will that the polity is committed to the protection of all of its citizens. In so doing, the First Amendment is not offended and free expression is not thereby chilled.

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[6] The ADL does not suggest that the burning of a cross, in any context, would constitute unprotected speech. The ADL concedes that the use of a burning cross as, for example, in a recent video recording of a performance by the singer Madonna, called "Like a Prayer", or even the burning of a cross at a political rally as a general expression of racial hatred or racial superiority, is protected expressive conduct. No matter how unpalatable the idea, the ADL believes that the expression of such opinions are protected. In such cases, there is no act which is directed at a specific individual who, in his or her own home, cannot avoid the impact. The context makes it clear that the cross burning in this case did not represent the type of expressive conduct which is entitled to First Amendment protection.

III. The Ordinance Is Not Overbroad Since It Prohibits Only Constitutionally Unprotected Conduct

A. The Ordinance Must Be Analyzed As Construed By The Minnesota Supreme Court

When a state court construes a statute or ordinance, this Court must review any constitutional challenge to the statute or ordinance *as construed*. *Kolander v. Larson*, 461 U.S. 352, 365 (1983) (quoting *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 496 n.5 (1982)); *Terminello v. Chicago*, 337 U.S. 1, 4 (1949) (state construction of ordinance is "a question of state law that is as binding on us as though the precise words had been written into the ordinance"). "Thus, whether a state statute actually is overbroad, whether it means what it says or something less than that, is a state law question on which state courts have the last word." Fallon, "Making Sense of Overbreadth," 100 Yale L.J. 853, 861 (1991). In considering criminal laws which punish speech or expressive conduct, this Court has consistently stressed that the constitutionality of the law is contingent upon the limiting construction, or lack thereof, employed by the lower court.[7]

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[7] *Chaplinsky v. New Hampshire*, 315 U.S. 568, 573 (1942) (Court upheld constitutionality of statute as construed by state court to reach only "fighting words"); *Colten v. Kentucky*, 407 U.S. 104 (1972) (state disorderly conduct law held constitutional because, as construed by state courts, it could not punish individuals merely for expressing unpopular or annoying ideas); *Lewis v. New Orleans*, 415 U.S. 130, 132 (1974) (law unconstitutional because state court failed to construe it narrowly);

Consistent with federal and state law, the Minnesota Supreme Court narrowly construed the Ordinance to reach only conduct or speech not protected by the First Amendment. As construed, the Ordinance is limited to "fighting words and those words which tend to incite imminent lawless action." *In the Matter of R.A.V.*, 464 N.W.2d 507, 510 (citing *Chaplinsky*, 315 U.S. at 572 and *Brandenburg*, 395 U.S. at 447). The Court therefore has before it a limiting construction that is precisely in accordance with the instructions it has previously and consistently given when reviewing laws similar to the Ordinance.

The Ordinance language which Petitioner attacks as vague and overbroad--"anger, alarm or resentment" -- has been interpreted by Minnesota courts to be limited to fighting words *every time* these words have been challenged as unconstitutional. *In the Matter of R.A.V.*, 464 N.W.2d at 510 (citing *In Re S.L.J.*, 263 N.W.2d 412, 419 (Minn. 1978)); *see also City of Little Falls v. Witucki*, 295 N.W.2d 243 (Minn. 1980); *City of Minneapolis v. Lynch*, 392 N.W.2d 700 (Minn. Ct.

Gooding v. Wilson, 405 U.S. 518, 520, 524-25 (1972) (only state court is empowered to construe state laws to avoid unconstitutionality; statute unconstitutional because state appellate court failed to limit it to prohibiting "fighting words"); *Brandenburg v. Ohio*, 395 U.S. 444, 448-49 (1969) (Ohio criminal syndicalism statute unconstitutional because no limiting instruction below cured constitutional defect); *see also Kelly v. Ohio*, 416 U.S. 923 (1974) (disorderly conduct statute unconstitutional because had not been limited by state court to prohibit only fighting words); *Rosen v. California*, 416 U.S. 924 (1974) (same); *Coates v. Cincinnati*, 402 U.S. 611 (1971) (same); *Plummer v. City of Columbus*, 414 U.S. 2 (1973) (same); *Cox v. Louisiana*, 379 U.S. 536 (1965) (same).

App. 1986); *State v. Klimek*, 398 N.W.2d 41 (Minn. Ct. App. 1986). When the St. Paul City Council passed the Ordinance in 1989, the words "anger, alarm or resentment" had already been subject to such a limiting construction. Petitioner ignores this precedent when asserting that this Court must reject the Minnesota Supreme Court's interpretation of the Ordinance. Pet. Br. at 21-26.

B. The Ordinance As Construed Prohibits Only Fighting Words And Conduct Inciting Imminent Lawless Action

The Ordinance as construed may be applied only to punish unprotected conduct. It is incapable of application to protected expression and cannot therefore be considered overbroad. In evaluating an overbreadth attack, a court's first task is to determine whether the enactment reaches a substantial amount of constitutionally protected conduct. *City of Houston, Texas v. Hill*, 482 U.S. 451 (1987) (citing *Hoffman Estates v. The Flip Side, Hoffman Estates, Inc.*, 455 U.S. 489, 494 (1982)); *New York v. Ferber*, 458 U.S. 747, 770-71 (1982). The Minnesota Supreme Court limited the Ordinance to proscribe "fighting words" as defined by this Court in *Chaplinsky*, and conduct that is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action." 464 N.W.2d at 510 (quoting *Brandenburg*, 395 U.S. at 447).[8] No person would be guilty of a crime under

[8] The Minnesota Supreme Court thus did precisely what the Supreme Court of Louisiana failed to do in *Lewis v. City of New Orleans*, 415 U.S. 130 (1974) ("Lewis II"). In Lewis II, this Court struck down a New Orleans ordinance after the Supreme Court of Louisiana failed specifically to limit the reach of such ordinance to fighting words as defined in *Chaplinsky*.

the Ordinance unless his conduct constituted fighting words or fell within the imminent lawless action doctrine enunciated in *Brandenburg*. The Ordinance therefore aims only at unprotected speech and conduct.[9]

In so narrowing the Ordinance, the Minnesota Supreme Court relied upon longstanding exceptions to the First Amendment that this Court has identified and, further, set forth tests to distinguish protected from unprotected expression that are fully consistent with well-settled First Amendment jurisprudence. To reverse this narrowing construction, the Court would have to overrule these established exceptions to the First Amendment.

The test used by the Minnesota Supreme Court to determine fighting words, "those which by their very utterance inflict injury or tend to incite immediate violence," 464 N.W.2d at 510 (citing *Chaplinsky*, 315 U.S. at 572) is taken directly from *Chaplinsky* and its progeny. This Court has been careful to note that the "fighting words" doctrine is vital and remains in essentially the same form as

[9] Petitioner's reliance on the "functional overbreadth" analysis of Professor Fallon in "Making Sense of Overbreadth," 100 Yale L.J. 853 (1991), is misplaced. The Minnesota Supreme Court did not merely conclude that the Ordinance would only punish unprotected speech but cited specific tests, i.e., those of *Chaplinsky* and *Brandenburg*, which distinguish protected from unprotected speech. According to Professor Fallon, this construction would not leave the Ordinance functionally overbroad. *Id.* at 907.

was enunciated in *Chaplinsky*.[10] Similarly, the "imminent lawless action" test set forth in *Brandenburg* has stood undisturbed by this Court. The Minnesota Supreme Court has done exactly what this Court has done every time it has considered the facial constitutionality of similar laws--set forth the *Chaplinsky* fighting words doctrine. Unless this Court is prepared to overturn this doctrine, and the line of precedent establishing it, the construction below must be upheld.

IV. The Ordinance As Construed Is Not Void For Vagueness

Petitioner asserts that the Ordinance, *even as construed*, is impermissibly vague. Pet. Br. at 30-31. Petitioner cannot attack the Ordinance as vague because the act for which he is charged--cross burning--is clearly punishable under the Ordinance. "Where the vice is vagueness, the litigant asserting the vagueness defense must demonstrate that the statute in question is vague either in all possible applications or at least as applied to the litigant's conduct, and not simply as applied to some others."

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[10] This Court has restated the *Chaplinsky* definition of fighting words on many occasions. *See, e.g., Texas v. Johnson*, 491 U.S. 397 (1989); *Karlan v. Cincinnati*, 416 U.S. 924, 927 (1974); *Gooding, 405 U.S.* at 522; *Lewis II*, 415 U.S. at 219; *Papish v. University of Missouri*, 410 U.S. 667, 676 (1973); *Times Film Corp. v. City of Chicago*, 365 U.S. 43, 48 (1961); *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 506 (1952); *Beauharnais v. Illinois*, 343 U.S. 250, 255 (1952); *Dennis v. United States*, 341 U.S. 494, 544 (1951); *Kunz v. New York*, 340 U.S. 290, 298 (1951); *Terminello v. Chicago*, 337 U.S. 1, 26 (1949). *See also* Shea, "Don't Bother to Smile When You Call Me That--Fighting Words and the First Amendment," 63 Kentucky L.J. 1, 10-17 (1975).

Tribe, *American Constitutional Law* 1036 (2d ed. 1988) (citing *Parker v. Levy*, 417 U.S. 733, 753-58 (1974)). Petitioner cannot sustain this burden.

Moreover, Petitioner's concern that the boundary between permissible and impermissible expression cannot be discerned is misplaced. The words "anger, alarm and resentment" have been construed by the Minnesota courts consistently over many years. *In the Matter of R.A.V.*, 464 N.W.2d 507 (Minn. 1991); *In Re S.L.J.*, 263 N.W.2d 412 (Minn. 1978); *City of Little Falls v. Witucki*, 295 N.W.2d 243 (Minn. 1980); *City of Minneapolis v. Lynch*, 392 N.W.2d 700 (Minn. Ct. App. 1986); *State v. Klimek*, 398 N.W.2d 41 (Minn. Ct. App. 1986). The Ordinance further requires that a perpetrator know or have reason to know that his act will cause the prohibited effect and that his act be based upon, *inter alia*, the race of his victim.

This Court in *Chaplinsky* stated that the New Hampshire disorderly conduct statute, *as construed*, was "narrowly drawn and limited to define and punish specific conduct. . . ." 315 U.S. at 770. This conclusion, it was held, "necessarily disposes of applicant's contention that the statute is so vague and indefinite as to render a conviction thereunder a violation of due process." *Id.*

It strains credibility to assert that ordinary citizens would be unable reasonably to distinguish between protected speech, on the one hand, and, on the other hand, expressive conduct which is threatening, harassing, intimidating or injurious and which is directed at a victim on account of his race.

V. The Ordinance As Construed Is Consistent With Supreme Court Precedent Applying The Fighting Words Doctrine

Petitioner argues that the Ordinance, even as construed and limited by the Minnesota Supreme Court, must be declared unconstitutional because of the manner in which it *might* be applied below. Because this case involves a facial challenge to the Ordinance, these arguments are premature; since possible attempts to apply the Ordinance are inherently speculative, they cannot provide the basis for overturning a limiting construction that is in accordance with established First Amendment jurisprudence. Should this Court choose to address these issues, however, what follows is a discussion on how the application of this Ordinance as construed would be constitutional.

The Minnesota Supreme Court was careful to point out that the Ordinance does *not* assume that "any cross burning, irrespective of the context in which it occurs, is subject to prosecution." 464 N.W.2d at 510. Rather, the Ordinance as construed will reach only those cross burnings--or similar use of other symbols charged with violence and terror--which are "expressions of hatred and resort to bias-motivated personal abuse that the First Amendment does not protect." *Id.* at 511.

So construed, the Ordinance does not concern itself with the mere "offensive" nature of the burning cross. Similarly, the Ordinance does not prohibit the use of any symbol, including a burning cross or a swastika, to express one's viewpoint, even if that viewpoint is one of racial bias. The Ordinance proscribes only uses which are "personally abusive."

So long as symbols are used to express a general viewpoint, no matter how offensive that viewpoint, the Ordinance simply does not apply. The Minnesota Supreme Court clearly recognized that St. Paul may not proscribe the use of symbols merely because they express an unpopular or "offensive" opinion. Rather, it is the injurious nature of the burning cross in certain contexts--reasonably understood by the target to be a personal message of terror, intimidation and threat--which is proscribed.

The fighting words doctrine is not, as Petitioner asserts, limited strictly to "words that would provoke an average addressee to fight." *Chaplinsky*, 315 U.S. at 573. The definition also encompasses "words that by their very utterance inflict injury." *Id.* at 572. The "inflict injury" language has never been rejected by this Court, and indeed it is well suited to punish precisely the type of conduct that is at issue in this case.

Proper application of this language would not undermine the laudable goal of the First Amendment--to foster the free flow of ideas in a democratic society. "Vulgar, offensive and shocking" expressions that are protected by the First Amendment would not be at risk, *see Cohen*, 403 U.S. at 20; *F.C.C. v. Pacifica Foundation*, 438 U.S. 726, 745-47 (1978), but only conduct which, despite having some expressive content, inflicts direct injury:

> The negative effects of hate messages are real and immediate for the victim. Victims of vicious hate propaganda have experienced psychological symptoms and emotional distress

> ranging from fear in the gut, rapid pulse rate and difficulty in breathing, nightmares, post-traumatic stress disorder, hypertension, psychosis and suicide.

Matsuda, "Public Response to Racist Speech: Considering the Victim's Story," 87 Mich. L. Rev. 2320, 2336 (1989); *see also Cantwell v. Connecticut*, 310 U.S. 296, 307-310 (1940) ("Resort to epithets or personal abuse . . . is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act [raises] no question under that instrument.") These are expressions that, as this Court recognized in *Chaplinsky* and has reaffirmed continually thereafter, "are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." 315 U.S. at 572.

However, this Court is not now required to pass on the validity of the "inflict injury" language in the *Chaplinsky* definition because it has not been applied to R.A.V.'s conduct. At present, the Minnesota Supreme Court has merely done what this Court has done every time it addresses an issue of fighting words, i.e., set forth the *Chaplinsky* definition. Subsequent application of this doctrine to R.A.V.'s conduct is inherently speculative. The court below may find that R.A.V.'s acts either were likely to provoke the victim to fight, or that such acts inflicted injury, or both, or neither. Regardless, speculation as to application of the Ordinance cannot be the basis for invalidating a limiting

construction that is entirely consistent with well-settled state and federal precedent.[11]

Furthermore, the fact that the Ordinance specifically lists a burning cross and a swastika as examples of punishable symbols is not constitutionally significant. Their listing does not, as suggested by Petitioner, impose a state-sponsored prohibition of racial intolerance. Pet. Br. at 16-17. Rather, their listing simply reflects a legislative recognition of the symbols' association with violence and threats of violence, and the potential for resulting injury.

Similarly, the fact that the Ordinance makes reference both to public and private property is not of any constitutional significance. As limited by the Minnesota court, only personal attacks and threats are proscribed. Clearly, as the use of a symbol becomes more public and the target audience more generalized, the less likely it becomes that any specific person may reasonably interpret that symbol as a personal attack or threat. The conduct proscribed by the Ordinance is a crime against a *person*, not against property. As with other personal attacks, such as common assault, the location of the crime, while important in evaluating the facts, does not in itself change the nature of the attack and the resulting injury.

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[11] Moreover, even if this Court were to limit the definition of fighting words to exclude the "inflict injury" language, this case should be remanded to the Minnesota Supreme Court, as was done in *Lewis*, 408 U.S. 913 (1972), to reconsider its articulation of this doctrine.

The distinction between public expressions of offensive ideas and hate-motivated expressive conduct targeted at a specific individual is critical to distinguishing the conduct prohibited by the Ordinance from protected speech. The two recent flag burning cases make the distinction clear. In *Texas v. Johnson*, 491 U.S. 397 (1989), this Court considered the criminal conviction under a flag desecration statute of a protester who burned an American flag on the steps of the Dallas City Hall. The flag burning was in apparent opposition to the United States in general, to the Republican Party, or both. In holding that the flag burning was protected speech under the First Amendment, this Court specifically held that, based on the record of the case, the flag burning did not threaten social disorder or injury.[12] Given the general message expressed by Johnson's conduct and the forum in which it occurred, the Court concluded that "no reasonable onlooker would have regarded Johnson's generalized expression of dissatisfaction with the policies of the Federal Government as a direct personal insult or an invitation to exchange fisticuffs." Id. at 409; *accord Cohen v. California*, 403 U.S. 15 (1971) (conviction of person who displayed phrase "F..k the Draft" on his jacket overturned; "no individual actually or likely to be present could reasonably have regarded the words on appellant's jacket as a direct personal insult"). Significantly, the

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[12] This Court repeatedly noted the lack of any evidence that a breach of the peace or physical injury was threatened. "No one was physically injured or threatened with injury," 491 U.S. at 399; "[the State] fails to show that a disturbance of the peace was a likely reaction to Johnson's conduct," Id. at 408; "State's interest in maintaining order is not implicated on these facts," Id. at 410.

Court in *Johnson did not* hold the Texas statute at issue unconstitutional on its face.

Similarly, in *Eichman v. United States*, 496 U.S. ___, 110 S. Ct. 2404 (1990), the Supreme Court considered the criminal conviction, under the federal Flag Protection Act of 1989, of two sets of protestors: a group that set burned flags on the steps of the United States Capitol in protest of certain federal domestic and foreign policies, and a group that set a flag on fire in protest of the Flag Protection Act (the location of the protest is not specified). Citing *Texas v. Johnson*, this Court simply chose not to reconsider its holding that flag burning enjoyed protection under the First Amendment.

Notably, both in *Texas v. Johnson* and in *Eichman v. United States*, the flag burning occurred in a public place, and the message communicated by the flag burning was directed not at specific individuals, but at the Federal Government or a political party. These cases stand only for the proposition that public flag burning as a means of political expression is protected by the First Amendment. Neither case supports the proposition that a person may burn an object at any place at any time simply because the burning is expressive conduct. They certainly do not suggest that the First Amendment protects the burning of a cross on private property to threaten, intimidate, harass or

terrorize a specific victim.[13]

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[13] The same analysis holds true in the Skokie, Illinois Nazi march cases. While holding that the expressive content of the public march could not be prohibited under the First Amendment, the Seventh Circuit proceeded to state:

> There is room under the First Amendment for the government to protect targeted listeners from offensive speech, but only when the speaker intrudes on the privacy of the home, or a captive audience cannot practically avoid exposure.

Collin v. Smith, 578 F.2d 1197, 1206 (7th Cir. 1978), *cert. denied*, 439 U.S. 916 (1978). Similarly, the Illinois Supreme Court held that the Nazis had a constitutional right to conduct the march, noting that the planned march had become common knowledge, that there was ample forewarning of its potentially offensive content, and that, therefore, a person could avoid a confrontation with the march. Once again, however, the Court reaffirmed that expressive conduct was not similarly protected when imposed on the privacy of one's home or on a captive audience. *Village of Skokie v. National Socialist Party of America*, 69 Ill. App. 2d 605, 612, 373 N.E.2d 21 (1978)373 N.E. 2d 21, 26 (1978). Unlike the situation in Skokie, the victims in the instant case could not ignore the distasteful conduct, nor could they choose to absent themselves from the site at which the act was committed. In their homes, in what should have been a preserve of peace and security, they could not avoid the attack. They were not observers or onlookers, they were truly victims. *See also Boos v. Barry*, 485 U.S. 312 (1988) (Court held portion of a federal statute unconstitutional, but approved another federal statute which prohibited willful acts or attempts to "intimidate, coerce, threaten, or harass").

CONCLUSION

The burning of a cross in the private yard of a black family in an all-white neighborhood is a vicious act which threatens, harasses and intimidates. St. Paul Ordinance § 292.02, as construed by the Minnesota Supreme Court, is a constitutionally acceptable way of criminalizing such behavior. The Ordinance prohibits only conduct which constitutes fighting words or which incites imminent lawless action. As so construed, the Ordinance is neither overbroad nor vague: it does not reach constitutionally protected speech and it gives clear notice as to what is prohibited. For these reasons, the decision of the Minnesota Supreme Court should be affirmed.

Respectfully submitted,

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APPENDIX A

Alabama
Ala. Code § 13A-11-12 (1988)

Arizona
Ariz. Rev. Stat. Ann. §§ 13-1504 and -1604 (West 1989)

Arkansas
Ark. Stat. Ann. §§ 5-71-207 and -215 (1987)

California
Cal. Penal Code § 190.2(a)(16)(West Supp. 1991); Cal. Penal Code § 302 (West 1988 and Supp. 1991); Cal. Penal Code §§ 422.6 and .7 (West 1988); Cal. Penal Code §§ 594 and 594.3 (West 1988); Cal. Penal Code § 1170.8 (West 1985); Cal. Penal Code §§ 11410-11413 (West 1988 & Supp. 1991)

Colorado
Colo. Rev. Stat. §§ 18-9-113 and -121 (West 1990 & Supp. 1991)

Connecticut
Conn. Gen. Stat. Ann. § 46a-58 (West 1986); Conn. Gen. Stat. Ann. § 52-251b (West Supp. 1991); Conn. Gen. Stat. Ann. § 53-37a (West 1987); Conn. Gen. Stat. Ann. §§ 53a -400, and -181b (West 1988 & Supp. 1991); Connecticut Data Collection Statute: Committee Bill No. 5993 (1988)

Delaware
Del. Code Ann. tit. 11, § 1331 (1987)

District of Columbia
D.C. Code Ann. § 22-1114, 3112.2-3112.4 (1989); D.C. Code Ann § 4001-4004 (Supp. 1991)

Florida
Fla. Stat. Ann. § 806.13 (West 1976 & Supp. 1991); Fla. Stat. Ann § 871.01-.03 (West 1975 and Supp. 1991); Fla. Stat. Ann. § 876.17 to .19 (West 1976 and 1991 Supp.); Fla. Stat. Ann. § 877.19 (West 1976 & Supp. 1991); Fla. Stat. Ann. §§ 775.0845 and .085 (West 1976 & Supp. 1991)

Georgia
Ga. Code Ann. § 16-7-26 (Harrison 1982); Ga. Code Ann. §§ 16-11-37 to -38 (1988)

Hawaii
Haw. Rev. Stat. § 711-1107 (1988)

Idaho
Idaho Code §§ 18-6201 and -7901 to -7904 (1987); Idaho Code § 67-2905 (1989)

Illinois
Ill. Ann. Stat. ch. 38, ¶¶ 12-2(2) and 21-1.2 (Smith-Hurd Supp. 1991); Ill Ann. Stat. ch. 38, para. 1005-5-3.2 (Smith-Hurd 1982 and Supp. 1991) Ill. Ann. Stat. ch. 127, ¶ 55a (Smith-Hurd Supp. 1991)

Indiana
Ind. Code Ann. § 35-43-1-2 (West 1986 & Supp. 1987)

Iowa
Iowa Code Ann. § 729.5 (West 1991 & Supp. 1991)

Kansas
Kan. Stat. Ann. § 21-4111 (1988)

Kentucky
Ky. Rev. Stat. Ann. § 525.110 (Michie 1990)

Louisiana
La. Rev. Stat. Ann. §§ 9:2799.2, 14:225 and 14:313 (West 1986 & Supp. 1991)

Maine
Me. Rev. Stat. Ann. tit. 17-A, §§ 507 and 507-A (West 1983 & Supp. 1990)

Maryland
Md. Ann. Code art. 88B, §§ 9 and 10 (1985 and Supp. 1990); Md. Ann. Code art. 27, §§ 10A and 470A (1988 and Supp. 1990)

Massachusetts
Mass. Ann. Laws ch. 6, § 116B (Law. Co-op Supp. 1991); Mass. Ann. Laws ch. 22, §§ 16 to 19 (Law. Co-op Supp. 1991); Mass. Ann. Laws ch. 265, § 39 (Law. Co-op Supp. 1991); Mass Ann. Laws ch. 266, § 98 (Law. Co-op 1980); Mass. Ann. Laws ch. 266, §§ 127A and 128B (Law. Co-op. Supp. 1991); Mass. Ann. Laws ch. 272, § 38 (Law. Co-op 1980);

Michigan
Mich. Comp. Laws Ann. § 752.525 (West 1991); Mich. Comp. Laws Ann. §§ 750.147(b), .217 and .396 (West 1991)

Minnesota
Minn. Stat. Ann. § 609.2231, .28, .595, .605, .735 and .795 (West Supp. 1991); Minn. Stat. Ann. § 626.5531 (West Supp. 1991)

Mississippi
Miss. Code Ann. §§ 97-17-39 and -35-17 (1973 & Supp. 1990)

Missouri
Mo. Ann. Stat. § 79.450 (Vernon 1987); Mo. Ann. Stat. §§ 574.085, .090 and .093 (Vernon Supp. 1991)

Montana
Mont. Code Ann. §§ 45-5-221 to -222 (1989)

Nevada
Nev. Rev. Stat. Ann. § 83.130 (Michie 1991); Nev. Rev. Stat. Ann. § 201.270 (Michie 1986); Nev. Rev. Stat. Ann. § 206.125 (Michie Supp. 1989); Nev. Rev. Stat. Ann. § 207.185 (Michie Supp. 1989)

New Hampshire
N.H. Rev. Stat. Ann. § 651.6 (1986 & Supp. 1990)

New Jersey
N.J. Stat. Ann. § 2C:12-1 (West 1982 & Supp. 1991); N.J. Stat. Ann § 2C:43-7 (West 1982 & Supp. 1991); N.J. Stat. Ann. § 2C:44-3 (West 1982 & Supp. 1991); N.J. Stat. Ann. § 2C:33-4 and -9 to -11 (West 1982 and Supp. 1991);

New Mexico
N.M. Stat. Ann. § 30-13-1 and -15-4 (1984)

New York
N.Y. Penal Law §§ 240.21, .30 and .31 (McKinney 1989); N.Y. Penal Law § 155.30(9) (McKinney Supp. 1991); N.Y. Penal Law § 165.45(6) (McKinney Supp. 1991); N.Y. Civ. Rights Law §§ 40-c to -d (McKinney Supp. 1991)

North Carolina
N.C. Gen. Stat. §§ 14-12.12 to -12.15, -144, -199 and -200 (1986)

North Dakota
N.D. Cent. Code §§ 12.1-14-04 to -05 (1985 & Supp. 1989)

Ohio
Ohio Rev. Code Ann. § 2909.05 (Baldwin 1990); Ohio Rev. Code Ann. §§ 2927.11 to .12 (Baldwin 1990)

Oklahoma
Okla. Stat. Ann. tit. 21, § 850 (West 1991); Okla Stat. Ann. tit. 21, §§ 914, 915, 1765 and 1301 to 1303 (West 1983)

Oregon
Or. Rev. Stat. §§ 30.190 and .200 (1988); Or. Rev. Stat. §§ 166.075, .155, and .165 (1990); Or. Rev. Stat. § 181.550 (1991)

Pennsylvania
18 Pa. Cons. Stat. Ann. §§ 2710, 3307 and 5509 (Purdon 1983 & Supp. 1991); 71 Pa. Cons. Stat. Ann. §§ 250(i) and 251 (Purdon 1990)

Rhode Island
R.I. Gen. Laws § 9-1-35 (1985); R.I. Gen. Laws §§ 11-11-1; R.I. Gen. Laws §§ 11-42-3, -44-31, -53-1, and -53-2 (1981 and Supp. 1990); R.I. Gen. Laws § 42-28-46 (1988)

South Carolina
S.C. Code Ann. §§ 16-7-110, -7-120 and -17-520 (Law. Co-op. 1985)

South Dakota
S.D. Codified Laws Ann. § 22-27-1 (1988)

Tennessee
Tenn. Code Ann. §§ 39-17-309, -311 and -313 (Supp. 1989)

Texas
Tex. Penal Code Ann. § 42.09 (Vernon 1974 & Supp. 1990); Tex. Penal Code Ann. § 28.03 (Vernon Supp. 1990)

Vermont
Vt. Stat. Ann. tit. 13, §§ 1454-1457 (Supp. 1990)

Virginia
Va. Code Ann. § 8.01-42.1 (1984 & Supp. 1990); Va. Code Ann. §§ 18.2-127, -138, -415, -422, -423 and 423.1 (1988 & Supp. 1991); Va. Code Ann. § 52-8.5 (1988)

Washington
Wash. Rev. Code Ann. § 9A.36.080 (1988 and Supp. 1991); Wash. Rev. Code Ann. §§ 9.61.160 and 180 (1988 and Supp. 1991);

West Virginia
W. Va. Code § 61-6-13, -21 and -22 (1989)

Wisconsin
Wis. Stat. Ann. § 895.75 (West 1983 & Supp. 1990); Wis. Stat. Ann. §§ 939.641 and .645 (West 1982 &

Supp. 1990); Wis. Stat. Ann. 943.012 (West 1982 & Supp. 1990)

United States
Federal Religious Vandalism Act, 18 U.S.C.A. § 247 (West Supp. 1989)
Federal Hate Crime Statistics Act, Pub. L. No. 101-275 (1990)

APPENDIX B

California
Cal. Penal Code § 11411 (West Supp. 1991)

Connecticut
Conn. Gen. Stat. Ann. § 46a-58 (West 1986)

District of Columbia
D.C. Code Ann. § 22-3112.2 (1989)

Florida
Fla. Stat. Ann. § 876.17 (West 1976)

Georgia
Ga. Code Ann. § 16-11-37 (1988)

Iowa
Iowa Code Ann. § 729.5.4 (West 1991)

Maryland
(Md. Ann. Code art. 27, § 10A (1988)

Montana
Mont. Code Ann. § 45-5-221.2 (1989)

New Jersey
N.J. Stat. Ann. § 2C: 33-10 (West 1982)

North Carolina
N.C. Gen. Stat. § 14-12.12 (1986)

Rhode Island
R.I. Gen. Laws § 11-53-2 (1982)

South Carolina
S.C. Code Ann. § 16-7-120 (Law. Co-op. 1985)

Tennessee
Tenn. Code Ann. 39-17-313.3(c) (Supp. 1989)

Vermont
Vt. Stat. Ann. Tit. 13, § 546 (Supp. 1990)

Virginia
Va. Code Ann. § 18.2-423 (1988 & Supp. 1990)

Washington
Wash. Rev. Code § 9A.36.080.2(a) (Supp. 1991).